

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LISA P.,

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:23-cv-02658-SPG-RAO

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation (ECF No. 18 (“Report”)) of the United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which objections have been made.

The Report recommends that the Commissioner’s decision denying disability benefits be affirmed. Plaintiff contends that the Administrative Law Judge (“ALJ”) failed to state clear and convincing reasons, with the support of substantial evidence, for rejecting Plaintiff’s testimony about her symptoms. *See* (ECF No. 19 (“Objection”)). For the following reasons, Plaintiff’s objections to the Report do not warrant a change to the Magistrate Judge’s findings or recommendation.

1 Plaintiff objects that the ALJ could “not rely solely on lack of objective
2 findings to discredit [her allegations of] pain.” (*Id.* at 3). However, as the Report
3 correctly stated, “[a]lthough lack of medical evidence cannot form the sole basis for
4 discounting pain testimony, it is a factor that the ALJ can consider in his credibility
5 analysis.” (Report at 6-7 (quoting *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.
6 2005))). Plaintiff further argues that the ALJ’s additional reasons for discrediting her
7 pain “are [not] supported” by the record. (Objection at 3). However, there were other
8 well-supported reasons identified in the Report, as discussed below. *See* (Report at
9 5-13).

10 Plaintiff objects that the ALJ improperly used evidence of daily activities to
11 discredit Plaintiff’s testimony because “there was no explanation as to how any of
12 these [activities of daily living] relate to work activities” or how they were
13 “transferable to a work setting.” (Objection at 3, 4). But an ALJ is not required to
14 find such activities relate or are transferable to a work setting in order to discount a
15 claimant’s testimony. Rather, evidence of such activities, even if not necessarily
16 transferable to a work setting, permitted the ALJ’s reasonable inference that
17 Plaintiff’s testimony magnified the extent of her symptoms. *See Valentine v.*
18 *Commissioner Social Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009) (“The ALJ
19 recognized that this evidence did not suggest [the claimant] could return to his old
20 job . . . , but she thought it did suggest that [the claimant’s] later claims about the
21 severity of his limitations were exaggerated.”); *see also Ghanim v. Colvin*, 763 F.3d
22 1154, 1165 (9th Cir. 2014) (“Engaging in daily activities that are incompatible with
23 the severity of symptoms alleged can support an adverse credibility determination.”).

24 Here, the ALJ reasonably found that Plaintiff’s “statements concerning the
25 intensity, persistence and limiting effects of [her] symptoms” were “not entirely
26 consistent” with the record’s evidence—including a “function report” completed by
27 Plaintiff—that demonstrated she was able to prepare meals, do household chores,
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1 take care of her husband and children, leave the house daily, shop, manage finances,
2 and interact with family and friends. *See* (ECF No. 9-3 at 26-27).

3 Plaintiff also objects that evidence of her past alcohol and drug use was an
4 irrelevant factor to the analysis of her testimony. (Objection at 4). This objection,
5 however, does not meaningfully refute the Report's ultimate conclusion that “[t]here
6 is sparse Ninth Circuit case law on this exact issue” and that this factor did not have
7 a significant role in the Report's analysis of the ALJ's assessment of Plaintiff's
8 testimony, given the presence of other meritorious reasons. (Report at 9).

9 Plaintiff argues that the ALJ provided “no discussion as to why he believes
10 there [was] exaggeration of symptoms [by Plaintiff] or the extent of such
11 exaggeration.” (Objection at 4). To the contrary, the ALJ adequately discussed this
12 finding. Specifically, the ALJ explained that, during a mental health examination
13 with Dr. Chronister, the doctor concluded that Plaintiff “appeared to be exaggerating
14 her symptoms at times” and that there “were no significant findings upon
15 examination other than [Plaintiff] was exaggerating her symptoms and she was
16 agitated.” (ECF No. 9-3 at 25); *see also* (ECF No. 9-73 at 104). The ALJ also cited
17 Dr. Chronister's evaluation findings as exhibits. Thus, the ALJ reasonably
18 concluded, based on the record, that Plaintiff magnified her symptoms, thereby
19 discounting her subjective symptom testimony.

20 Plaintiff objects that the Report improperly tried to “fix” the ALJ's decision
21 by pointing to evidence of exaggeration that the ALJ did not cite. (Objection at 4-5).
22 The Report did cite evidence of symptom exaggeration found by physicians other
23 than Dr. Chronister, *see* (Report at 9-10), even though the ALJ did not necessarily
24 cite the findings of these other physicians. However, the Report's citation of this
25 evidence was not improper. *See Warre v. Commissioner of Social Sec. Admin.*, 439
26 F.3d 1001, 1005 n.3 (9th Cir. 2006) (rejecting a claimant's argument that the citation
27 of evidence that supports the ALJ's position “is supplying a post-hoc rationalization
28 for the ALJ's decision,” even when the ALJ did not cite the evidence). Rather, the

1 Report's independent review of the record for evidence supporting or detracting from
2 the ALJ's finding of symptom exaggeration fully comported with a federal court's
3 duty of review under the substantial-evidence standard. *See Andrews v. Shalala*, 53
4 F.3d 1035, 1039 (9th Cir. 1995) ("To determine whether substantial evidence
5 supports the ALJ's decision, we review the administrative record as a whole,
6 weighing both the evidence that supports and that which detracts from the ALJ's
7 conclusion.").

8 Plaintiff objects that her conservative treatment was not a clear and convincing
9 reason to discount her testimony. (Objection at 5). This objection, however, does
10 not meaningfully undermine the Report's ultimate conclusion that Plaintiff's Humira
11 injections may not have constituted conservative treatment, and that this factor did
12 not have a significant role in the Report's analysis of the ALJ's assessment of
13 Plaintiff's testimony, given the presence of other meritorious factors. (Report at 11).

14 Plaintiff objects that her noncompliance with treatment for her diabetes was
15 not a clear and convincing reason for the ALJ to reject her testimony, given that there
16 was no such finding of her noncompliance with treatment for her rheumatoid arthritis.
17 (Report at 5). But Plaintiff cites no authority for the proposition that the ALJ's
18 finding about treatment noncompliance for one of her conditions is somehow invalid
19 or improper when such finding of noncompliance does not relate to or does not
20 demonstrate treatment noncompliance for her other conditions. To be sure, an ALJ
21 "must consider *all factors* that might have a significant impact on an individual's
22 ability to work." *Erickson v. Shalala*, 9 F.3d 813, 817 (9th Cir. 1993) (emphasis in
23 original and citation omitted). The record here, however, does not suggest that the
24 ALJ ignored Plaintiff's rheumatoid arthritis. Rather, the ALJ found that Plaintiff's
25 allegation of disabling symptoms was undermined by evidence of her active lifestyle.
26 (ECF No. 9-3 at 26). Thus, Plaintiff's suggestion that the ALJ's analysis of Plaintiff's
27 conditions was incomplete is unpersuasive.

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1 In sum, Plaintiff's objections are overruled.
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3 IT IS ORDERED that (1) the Report and Recommendation of the Magistrate
4 Judge is accepted and adopted; and (2) the decision of the Commissioner is affirmed.
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6 Dated: March 31, 2025
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8 HON. SHERILYN PEACE GARNETT
9 UNITED STATES DISTRICT JUDGE
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